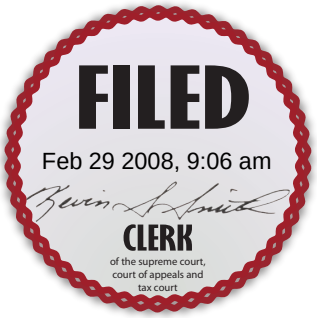

ATTORNEY FOR APPELLANT:

JILL M. ACKLIN
Westfield, Indiana

ATTORNEY FOR APPELLEE:

JEFFREY LEEPER
Marion County Department
of Child Services
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF C.S., a Child In Need of Services,	)	
JAMES CVERCKO,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A05-0708-JV-479
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee (Guardian Ad Litem).	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Beth Jansen, Magistrate
Cause No. 49D09-0701-JC-3541

February 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

James Cvercko ("Father") appeals the trial court's determination that his infant daughter C.S. is a Child In Need of Services ("CHINS").

We affirm.

ISSUE

Whether sufficient evidence supports the trial court's judgment.

FACTS

On January 18, 2007, Ynn Strong ("Mother") gave birth to C.S., who was several weeks premature and subsequently placed in the hospital neonatal intensive care unit. Physicians contacted a social worker based on concerns about Mother's substance abuse, history of mental illness, and not having custody of her other children.

Social worker Lindsay Lukens then contacted Mother on January 20th to conduct a psycho-social assessment. Mother advised Lukens that she was living with Father. Mother told Lukens that she was concerned that Father "didn't want to take ownership of the baby." (Tr. 22). Lukens had had previous experience with Mother's loss of custody and parental rights as to three children and knew that Mother did not have custody of any of her children. Mother told Lukens that she had a total of fourteen children, had never had her rights to any of them terminated, and planned to bring several to live with her and C.S. Mother reported to Lukens "that she had a long history of depression and some mental health issues," but was "not currently in treatment and had no plans to start

treatment." (Tr. 26). Mother told Lukens that "she really didn't think she needed" any services. (Tr. 30). Lukens had "concerns about [Mother]'s ability to parent" C.S.

Lukens also met with Father at the hospital but found him "not easily engaged" when she tried to discuss his providing for C.S. (Tr. 32). Rather than talk with Lukens about C.S., Father's focus was "watching television and eating chips." (Tr. 37).

On January 26, 2007, the Marion County Department of Child Services ("DCS") filed a petition alleging that C.S. was a CHINS. The trial court placed C.S. under temporary supervision of DCS. On February 1st, C.S. was placed in foster care. At a pretrial hearing on March 1st, Mother advised the trial court that she would agree to Father having custody; the case manager reported that a study of Father's home was scheduled for that very day.

The fact-finding hearing was held on June 13, 2007. The trial court heard testimony from social worker Lukens, as reflected above. The trial court also received exhibits reflecting that Mother's rights as to three children had been terminated. Deondra Meredith, the DCS caseworker for C.S., testified that she understood that nine other children had been removed from Mother's custody by the State of Kentucky. Meredith testified that she had concerns about Father's ability to parent C.S. based on the reports of a YES[1] assessment and parenting assessment by the Children's Bureau.[2] According to Meredith, these reports indicated that the appropriateness of Father's efficiency

[1] According to the brief of DCS, "Y.E.S." is Youth Emergency Services.

[2] These assessments were not entered into evidence, but the trial court stated that it had "parenting assessments" in its file. (Tr. 70). Father's counsel cross-examined Meredith on the contents of both reports.

apartment had been questioned; that Father needed to acquire a crib and a fire extinguisher; and that Father should undergo a psychological evaluation. Both Meredith, and her supervisor LeJeune Williams, expressed to the trial court their concerns about Father's ability to parent C.S.

Mother testified that she was no longer living with Father but in an apartment adjacent to his. Father testified that he was working at a pizza parlor, earned $250-275 weekly, and had rental and telephone expenses of $530 monthly. Father admitted that he had not been a parent before and had no experience parenting, but he explained that he had taken two two-hour parenting classes[3] and intended to complete the parenting course. Father admitted that he had not yet obtained a crib or a fire extinguisher. He also admitted that he had not yet completed the psychological evaluation. Father testified that while he worked, he would have child care for C.S.; however, he admitted that he had not yet made any arrangements in that regard.

At the conclusion of the hearing, the trial court summarized its finding on the evidence. It noted Mother's history of alcohol related issues and of noncompliance with mental health treatment; her history with DCS as to the termination of three children; and that none of her 14 children were in her custody.[4] Regarding Father, the trial court found that "at this time," he was "unable to provide an appropriate home for the child," based upon "the fact that months and months have gone by and he ha[d] not obtained a crib or a fire extinguisher," and his "interaction with [M]other [wa]s such . . . that [the trial court]

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[3] This testimony was given approximately six months after the birth of C.S.

[4] This fact-finding proceeding also involved allegations as to Mother that C.S. was a CHINS.

believe[d] that [M]other would have access to the child," which it found "inappropriate at this time." (Tr. 114-115). The trial court further found "the child care issues [we]re as yet unresolved" as to Father. (Tr. 115). It found Father had "not demonstrated that he can appropriately parent this child," given his "lack of any prior children, [and] that he's never been a father before," and his failure to follow through with the assessment recommendations. *Id.* The trial court concluded that "largely due to his inability to provide an appropriate home and [the trial court's] concerns regarding his sole ability to appropriately parent and supervise this child" alone, it was "inappropriate to place the child in the care of her father at this time." *Id.* The trial court noted that Father's visitation with C.S. would continue, and that "reunification" continued to be the "plan for permanency." (Tr. 118).

On July 18, 2007, the disposition hearing was held, and the trial court issued its CHINS disposition order. The trial court found that services had been offered to Father but had not been "completed" so as to allow C.S. to be in Father's custody, that it was "contrary to" her health and welfare to be in his custody, and that she should remain in foster care. (App. 15, 16).

DECISION

Indiana Code section 31-34-1-1 provides that a child under eighteen years of age is a CHINS if:

> (1) the child's physical or mental health is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and
> (2) the child needs care, treatment, or rehabilitation the child:

> (A) is not receiving; and
> (B) is unlikely to be provided or accepted without the coercive intervention of the court.

It was the burden of DCS to prove by a preponderance of the evidence that C.S. was a CHINS. Ind. Code § 31-34-12-3.

When reviewing the sufficiency of the evidence in a CHINS determination, "we consider only the evidence most favorable to the judgment and the reasonable inferences flowing therefrom." *In re M.W.*, 869 N.E.2d 1267, 1270 (Ind. Ct. App. 2007). We will not reweigh the evidence or judge the credibility of witnesses. *Id.*

Father argues that the DCS "failed to prove by a preponderance of the evidence that C.S. needs care that she is not receiving and that [he] is unlikely to provide that care without coercive intervention of the Court." Father's Br. at 7. Specifically, Father argues that the "record reflects that [he] has made plans and preparations for the potential gaining of the custody of his daughter." *Id.* However, the question is not whether he has "made plans," *id.*, or whether he could parent C.S. at some point in the future, but whether he had in place the necessities and the capability to parent C.S. at the time of the fact-finding hearing. Further, we find Father's argument asks that we reweigh the evidence, which we do not do. *See M.W.*, 869 N.E.2d at 1270.

The evidence clearly established that at the time of the hearing, Father's residence included neither a crib for C.S. nor a fire extinguisher, and he had not completed the psychological evaluation. Further, Father's testimony alluded to his interaction with Mother – that he had "discussed" possible public assistance benefits for C.S. with her, and that he could apply for food stamps "as a joint custody between [Mother] and [him]."

(Tr. 106). He admitted that Mother "visit[ed]" his residence, "occasionally" overnight, and kept things "in storage" there. (Tr. 101, 110, 109). This evidence supported the trial court's reasonable inference that Mother would have access to C.S. at his residence; and the evidence clearly supports the trial court's inference that without mental health treatment or her commitment to participation in services that would support her own parenting skills, Mother's unsupervised access to C.S. would not be appropriate. The foregoing evidence, taken together, supports the reasonable inference that C.S.'s well-being was seriously endangered or impaired by Father's inability to provide for her at the time of the fact-finding hearing, and that C.S. needed care that he was not providing and was not likely to provide "without the coercive intervention of the court." I.C. § 31-34-1-1. Therefore, the evidence supports the trial court's adjudication that C.S. was a CHINS.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.